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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Lloyd W Sadler  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, UT 84145-0898

EXAMINER

NGUYEN, THOMAS T

ART UNIT

PAPER NUMBER

2174

DATE MAILED: 04/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

09/689,225

Applicant(s)

AGUTTER ET AL.

Examiner

Thomas T. Nguyen

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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**FIRST OFFICE ACTION (paper #5)**

***Specification***

The abstract of the disclosure is objected to because processing “**means**” (p.48, line 4) which is not allowed. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3, line 2 discloses “**generally**” which is rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

*Claims 1-2, 4-5, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Perel US patent 5,769,082.*

As per claim 1: Perel discloses a device for data representation, comprising:

a reference grid; a first object frame, within said reference grid; and a first object associated to said first object frame (abstract, summary, cols.1-2 and Figs.7a-b).

Regarding claim 2, in addition to what is recited in claim 1, Perel discloses the object is associated with a cardiovascular function. For example, Perel discloses “FIG. 7a depicts the change in the downslope of the four minimal systolic values during the procedure. The exaggerated volume responsiveness at points 1-4 and 13 can be clearly seen while points 7, 8, 10, 11 and 12 are characterized by a lack of change in the systolic blood pressure during the respiratory maneuver of the present invention, thereby denoting a non-volume responsive state and indicating to a skilled person that a blood transfusion would probably not be of too much use, while cardiogenic agents may improve cardiac function, if so desired” (col.7 lines 19-28).

Regarding claim 4, in addition to what is recited in claim 1, Perel’s first object is associated with a numeric value (Figs. 7a-b).

Regarding claim 5, in addition to what is recited in claim 1, Perel displays a second object frame placed within said reference grid (Figs. 7a-b).

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Regarding claim 7, in addition to what is recited in claim 5, Perel discloses a sloped region positioned between said first object and said second object, "FIG. 7b depicts the change in the upslope, i.e., the maximal systolic values during the RSVT, during the procedure. Points 10-12 are characterized by steep upslopes and flat downslopes" (col.7 lines 29-31).

***Claim Rejections - 35 USC § 103***

*Claims 3, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perel US patent 5,769,082 in view of Gibson US patent 5,812,688*

Regarding claim 3, in addition to what is recited in claim 1, Perel fails to disclose first object has a generally cylindrical shape. On the other hand, it was known in the art that displayed graphic objects are associated with different shape, motion, position, color. For example, Gibson discloses "visual characteristics of the visual image, such as size, location, texture, density and color, and dynamic changes or adjustment to any one of these parameters causes a corresponding change in the correlated parameter" (summary, col.2 lines 28-31), and "The characteristics of the visual images, such as shape, size, spatial location, color, density and texture are correlated" (col.3 lines 15-18, Figs.11a-c). Therefore, it would have been obvious to one with ordinary skills in the art at the time the invention was made to use Gibson's teaching of image's cylindrical shape with Perel's system to producing data and displaying graphical objects because it would provide the medical practitioner a more accurate method of measuring, examining the graphical information in GUI environment.

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Regarding claim 6, in addition to what is recited in claim 5, Perel discloses a second object associated with the second object frame (Figs.7-b).

### Conclusion

Any inquiry concerning this communication or earlier communications should be directed to the Patent Examiner **Thomas T. Nguyen**, whose telephone number is (703) 308-7240 (Monday to Friday 10:30 - 7:00 ET) or *Kristine Kincaid* Supervisory Patent Examiner (703) 308-0640. Other inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900 and Official-Fax number (703) 746-7239.

Thomas T. Nguyen

April 10, 2003

*Kristine Kincaid*  
**KRISTINE KINCAID**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**